

REMARKS/ARGUMENTS

Applicants have received and carefully reviewed the Office Action of the Examiner mailed October 28, 2008. Currently, claims 1, 3, 4, 6-15, 21-23, and 26-29 remain pending and claim 15 has been withdrawn from consideration. Claims 1, 3, 4, 6-14, 21-23, and 26-29 have been rejected. In this amendment, claims 1, 4, 6-8, 10, 14 and 21-23 have been amended, and claim 11 has been cancelled. Support for the amendments may be found in the specification and drawings. No new matter has been added. Favorable consideration of the above amendments and the following remarks is respectfully requested.

Claim Objections

The Examiner has objected to claim 10 under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim, and has required cancellation, or correction of the claim, stating that claim 10 “merely reiterates lines 5 and 6 of base claim 1 with regard to the ports proximal of the distal end.” Applicants respectfully disagree, and suggest that the claim language has been misunderstood.

Independent claim 1 recites, in part, “aspiration ports located circumferentially on the elongated shaft at one or more longitudinal positions proximal of the distal end” (emphasis added). Claim 10 recites, in part, “aspiration ports are located proximate the distal end of the elongated shaft” (emphasis added). The words proximal and proximate appear to have been interpreted as defining the same relationship, which they do not. Applicants submit that “proximal” may be considered a directional term, while “proximate” may be considered a term of proximity or location.

Accordingly, Applicants submit that claim 10 does indeed further limit claim 1, and thus respectfully request that the objection be withdrawn.

Claim Rejections – 35 USC § 112

The Examiner has rejected claims 11 and 14 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 was rejected as contradicting base claim 1, rendering the claim indefinite. Without conceding the correctness of the rejection, Applicants have cancelled claim 11, rendering the rejection moot.

Claim 14 was rejected for the use of the phrase “etc.” which is asserted to render the claim indefinite because it includes elements not actually disclosed. To facilitate advancement of the application, claim 14 has been amended to remove the aforementioned “etc.” Applicants believe the amendment overcomes the Examiner’s rejection under 35 U.S.C. §112, second paragraph. Accordingly, Applicants request that the indefiniteness rejection of claim 14 be withdrawn.

Claim Rejections - 35 USC § 102

Claim 23 was rejected under 35 U.S.C. §102(e) as being anticipated by Belef et al. (U.S. Patent No. 7,169,165). Applicants respectfully traverse the rejection, particularly in view of the current amendments.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). (MPEP 2131).

Belef et al. do not appear to disclose a plurality of aspiration ports located circumferentially on the elongated shaft at one or more longitudinal positions proximal of the distal end.

Therefore, since Belef et al. do not appear to disclose each and every element of claim 23, Belef et al. cannot anticipate the claim. Withdrawal of the rejection is respectfully requested.

Claim Rejections - 35 USC § 103

Claims 1, 3, 4, 6-14, 21, 22, and 26 were rejected under 35 U.S.C. §103(a) as being unpatentable over Belef et al. in view of Tao (U.S. Patent No. 6,610,005). After careful review, Applicants must respectfully traverse the rejection, particularly in view of the current amendments.

“All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). (MPEP 2143.03).

Similar to independent claim 23 above, Belef et al. do not appear to disclose or suggest a plurality of aspiration ports located circumferentially on the elongated shaft at one or more longitudinal positions proximal of the distal end, as required by independent claim 1, nor is there any reason suggested to modify Belef et al. to include a plurality of ports. The port is disclosed by Belef et al. as a guidewire port, and as noted in the Office Action, Belef et al. does not directly address using the disclosed port of Figures 1B and 3A (relied upon in the Office Action) for aspiration. Tao does not appear to remedy the shortcomings of Belef et al.

Since Belef et al. and Tao, alone or in combination, do not appear to disclose or suggest each and every element of independent claim 1, as is required to establish a *prima facie* rejection, independent claim 1 is believed to be allowable over Belef et al. and Tao. Since claims 3, 4, 6-14, 21, 22, and 26 depend therefrom and add additional elements thereto, Applicants submit that claims 3, 4, 6-14, 21, 22, and 26 are also allowable over the cited references and respectfully request that the Examiner withdraw the rejection.

Claims 27-29 were rejected under 35 U.S.C. §103(a) as being unpatentable over Belef et al. in view of Tao as applied to claim 1, and further in view of Hoy (U.S. Patent No. 6,705,575). After careful review, Applicants must respectfully traverse the rejection.

As discussed above, independent claim 1 is believed to be allowable over Belef et al. and Tao. Hoy does not appear to remedy the shortcomings of Belef et al. and Tao with respect to claim 1. Since claims 27-29 depend therefrom and add additional elements thereto, Applicants submit that claims 27-29 are also allowable over the cited references and respectfully request that the Examiner withdraw the rejection.

Conclusion

In view of the foregoing, all currently pending claims are believed to be in a condition for allowance. Reexamination and reconsideration are respectfully requested. Issuance of a Notice of Allowance in due course is anticipated. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,
ROBERT M. RAUKER et al.
By their Attorney,

Date: August 12, 2009

/glenn m. seager/
Glenn M. Seager, Reg. No. 36,926
CROMPTON, SEAGER & TUFTE, LLC
1221 Nicollet Avenue, Suite 800
Minneapolis, Minnesota 55403-2420
Tel: (612) 677-9050